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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,691	10/17/2003	Douglas Christian Greening	52428-5	2690
23971	7590	09/08/2004		
BENNETT JONES C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA			EXAMINER DESAI, HEMANT	
			ART UNIT 3721	PAPER NUMBER
				DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/605,691	GREENING ET AL.
	Examiner	Art Unit
	Hemant M Desai	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 October 2003.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 June 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show "wicket mounting pin frame- 60" and the "position screw 62" and how the wicket mounting pin frame (60) is raised out of the way to use non-wicketed bags by use of positioning screws (62) as described in the specification (paragraph 0063). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 2-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Since applicant does not show in the drawings or describe in the specification how to convert temporarily or permanently the bag handling capabilities of a packaging machine from use of wicketed bags to use of non-wicketed bags and how the wicket mounting pin frame is raised out of the way to use non-wicketed bags by use of positioning screws. Further location of the wicket pin is also unknown. Therefore the specification at the time the application was filed would not have taught one skilled in the art how to make and/or use full scope of the claimed invention without undue experimentation.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3-4, 6, 8-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Several phrases in the claims are vague, indefinite and/or misleading, for example: "the wicketed pin area" (claim 3, line 2) it is not understood which wicketed pin area applicant is referring to, "the filled back conveyor" (claim 4, lines 2-3) it is not understood which filled back conveyor applicant is referring to, "the bag orienting device...travel" (claim 8, lines 1-4) it is not understood how applicant is orienting the bag and stopping the advancement of the bag moved by the belt since there is no orienting device and belt in claim 1, "the conveyor" (claim 11, line 1; claim 13, line 2; claim 16, line 3; claim 17, line 1) it not clear whether the applicant is referring to the filled bag conveyor or other conveyor, "the bag handler" (claim 15, line 1) it is not understood which bag handler applicant is referring to since there is no bag handler in claim 8.

Further, several phrases in the claims, for example: "the wicket pin area" (claim 3, line 2), "a bag" (claim 4, line 4; claim 6, line 2; claim 8, line 3; claim 9, line 3; claim 13, line2), "the bag orienting device" (claim 8, lines 1-2), "the conveyor" (claim 11, line 1; claim 13, line 2; claim 16, line 3; claim 17, line 1) lack proper antecedent basis.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 11, 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gabree et al. (5442898).

Gabree et al. disclose a bag presenter apparatus for use to present a bag for filling by a packaging machine, the bag including a first side panel and an opposite side panel (see fig. 5B) and the packaging machine having a filling station including a filling chute (120, fig. 5B) and a filled bag conveyor (40, fig. 1), the bag presenter apparatus comprising a bag gripper (46, 96, 98, fig. 5B) for holding the bag to be filled the packaging machine such that materials from the chute (120) can be introduced to the bag and the bag gripper configurable to hold the first side panel of the bag and in a position conducive to engagement of the bag by the filled bag conveyor (40) of the packaging machine, which meets all the claimed limitations.

Regarding claim 2, the bag presenter is a stand- alone unit and being mountable relative to the filling chute of a wicketed bag-packaging machine.

Regarding claim 5, the bag the bag gripper includes a pair of spaced apart gripping pinchers (46, 98, 96) selected to grip a first side panel of the bag to be filled at two spaced apart fixed points.

Regarding claim 6, the bag presenter moves the bag along a substantially uniform direction from a bag supply area to the bag gripper.

Regarding claim 11, the apparatus comprises a bag opening mechanism including engaging devices (clamp 46, 96, 98) selected to engage the side panels of the bag and pull them apart (see fig. 5D).

Regarding claim 13, the apparatus comprises a bag handler for carrying a bag to the gripper.

8. Claims 18-19 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Cerioni (3943687).

Cerioni discloses a bag presenter for moving a bag from a bag supply (10, fig. 1) to a packaging machine filling station (14, fig. 1), the bag presenter comprising a bag supply holding area (10), a gripper (48, 50, fig. 3) for holding the bag in the filling station and a bag handler (arm 28, 36, 38, figs. 1-3) for moving the bag from the holding area toward the gripper, the bag handler including a bag opening mechanism and a means for maintaining a bag in an configuration once opened (suckers 30, 40, figs. 1-2), which meets all the claimed limitations.

Regarding claim 19 the bag handler further comprising a bag opening mechanism including engaging devices selected to engage the side panels of a bag and pull them apart (suckers 30, 40, figs. 1-2).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabree et al. in view of Lipes (4253292).

Gabree et al., as mentioned above, disclose all the claimed limitations, except for a sensor for detecting a non-opening bag. However, Lips teaches a bag opening mechanism includes a sensor (120, fig. 2) to check the bag is opened properly to

receive the product (see col. 6, lines 58-61). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the sensor the bag presenter apparatus of Gabree et al. as taught by Lipes to check the bag is opened properly to receive the product.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cerioni in view of Lipes (4253292).

Cerioni, as mentioned above, disclose all the claimed limitations, except for a sensor for detecting a non-opening bag. However, Lips teaches a bag opening mechanism includes a sensor (120, fig. 2) to check the bag is opened properly to receive the product (see col. 6, lines 58-61). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the sensor in the bag presenter apparatus of Cerioni as taught by Lipes to check the bag is opened properly to receive the product.

12. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cerioni in view of Gabree et al. (5442898).

Cerioni, as mentioned above discloses all the claimed limitations, except for an air jet device as a bag-opening device. However, Gabree et al. teaches an air jet device (132, fig. 5B) to maintain the mouth of the bag in an opened configuration (see col. 8, lines 5-15). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the air jet device as a bag opening device in the bag presenter apparatus of Cerioni as taught by Gabree et al. to maintain the mouth of the bag in an opened configuration.

Regarding claim 23, Cerioni discloses that the means for maintaining the bag in an opened configuration is a gripping device (suckers 30, 40, figs. 1-2) selected to grip a side panel of the bag and to extend between the side panel and an opposite side panel of the bag tending to hold the side panels apart.

***Allowable Subject Matter***

13. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
14. Claims 8-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Hemant M. Desai*

Hemant M Desai  
Examiner  
Art Unit 3721

HMD